

Docket No. 0512-1023
Appln. No. 10/088,651

REMARKS

Applicants respectfully request the reconsideration and re-examination of the above-identified application.

Claims 18-37 are pending in the present application.

Claims 18-37 remain unchanged..

In the outstanding Official Action, the specification was objected to for failing to provide proper antecedent basis for the claimed subject matter. Specifically, it was alleged that the specification does not provide antecedent basis for the claimed terminology recited in claim 19 that "at least 60% by weight of droplets of emulsion Ei with respect to the total weight of the double emulsion." Applicants respectfully traverse the rejection.

At this time, the Examiner's attention is respectfully directed to page 4, lines 17-20, in the present specification. The application states:

The double emulsion of the invention comprises 50 to 90% by weight, preferably at least 60% by weight, for example 65 to 85% by weight, with respect to the total weight of the double emulsion, of droplets of emulsion Ei.

As this sentence illustrates, appropriate antecedent basis does exist in the specification to provide for the recitation of claim 19 that "at least 60% by weight of droplets of emulsion Ei with respect to the total weight of the double emulsion."

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Accordingly, applicants respectfully submit that the rejection of the specification on this basis be withdrawn.

Claims 18-37 were rejected as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as their invention. This rejection also respectfully is traversed.

In imposing the rejection, the Official Action alleged that although claims 18-37 recite "at least one hydrophilic active substance," the actual activity of the hydrophilic substance was unclear. Moreover, the Office Action alleged that the preferred embodiments do not set forth the metes and bounds of the terms recited in the application. As a result, the Office Action concluded that one having skill in the art would not know how to interpret the recitation.

Notwithstanding these assertions, the Patent Office is respectfully reminded that the subject matter of the claimed invention is a water-in-oil-in-water type double emulsion allowing the encapsulation of various active substances. See specification, page 1, at lines 10-11. Thus, one skilled in the art would recognize that the claimed emulsion can utilize a variety of active ingredients.

Indeed, applicants believe that the phrase would be readily recognized by one skilled in the art. The individual terms are commonly utilized by those skilled in the art. As previously noted, applicants describe the term "hydrophilic

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"active ingredient" (specification p. 10, lines 14-18) and give numerous specific examples of such active ingredients (specification p. 10, lines 19-25).

Applicants do not point to the examples to incorporate recitations from the specification to the claims, but rather show that while the term may be broad, the scope of the term is definite to one skilled in the art. Such active substances are preferably in the form of water-soluble polymers or salts and may be of any type of active substance generally used in one or more of the pharmaceutical, cosmetic, pest and disease control, or food and/or paint fields. See specification at page 10, lines 14-18. Specific examples of these active ingredients include vitamins (E, C), enzymes, insulin, analgesics, anti-mitotic, anti-inflammatory or anti-glaucomatous agents, vaccines, anti-cancer agents, narcotic antagonists, detoxification agents (salicylates, barbiturates), depilatories, taste-correcting or masking agents, water-soluble salts, acids, bases, vinegar, glucose, colorants, preservatives, or mixtures thereof. As a result, the phrase "hydrophilic active ingredient" is definite to one of ordinary skill in the art.

At this time, the Examiner is reminded that, simply because a claim is broad does not mean that it is indefinite. Breadth alone is not indefiniteness. *In re Miller*, 441 F.2d 689, 169 USPQ 597 (CCPA 1971); *In re Gardner et al.* (CCPA 1970) 427 F.2d 786, 166 USPQ 138; *In re Conley et al.* (CCPA 1974) 490 F.2d

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972, 180 USPQ 454; *Ex parte Lewis et al.* (POBA 1977) 197 USPQ 543; *Ex parte Scherberich et al.* (POBA 1977) 201 USPQ 397; *Ex parte Schundehutte et al.* (POBA 1974) 184 USPQ 697. See also Judge Baldwin's concurring opinion in *In re Mayhew* (CCPA 1976) 927 F.2d 1229, 188 USPQ 356. Indeed, while the phrase at issue may be broad, the terms and scope are definite to one skilled in the art.

In view of the above comments, applicants believe that claims 18-37 are definite to one of ordinary skill in the art.

At this time, applicants note with appreciation that claims 18-37 were identified as being allowable if re-written or amended to overcome the rejections under 35 U.S.C. § 112, 2nd paragraph as set forth in the outstanding Official Action.

In view of the present amendment and the foregoing remarks, therefore, applicants believe the present application is in condition for allowance at the time of the next Official Action with claims 18-37, as presented. Allowance and passage to issue on that basis respectfully is requested.

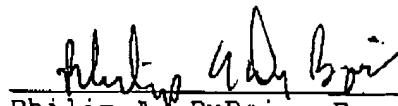
The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any

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overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

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In re application of Jerome BIBETTE et al.

Application No. 10/088,651

Filed June 20, 2002

Group Art Unit 1712 Conf. # 2772

- Petition for Extension of Time charged to Deposit Acct. # 25E120
 Amendment After Final Rejection

PD/jlw

DUE: 10/15/05

